

**SHB 2560 - H AMD 1080**

By Representative Kirby

Strike everything after the enacting clause and insert the following:

**NEW SECTION. Sec. 1.** Availability of insurance for loss arising from flooding in the geographical area protected by any dam is vital to the economy of the state of Washington. If adequate property insurance for loss arising from this flood is not available, the security of citizens' property and the viability of business operations and services are threatened. This chapter gives the commissioner authority to ensure continued availability of excess insurance to insure property at risk from, and business that is interrupted by, flood arising from the failure of a dam or from efforts to prevent the failure of a dam. The commissioner may establish a temporary joint underwriting association for excess flood insurance to insure property at risk from, and business that is interrupted by, flood arising from the failure of a dam or from efforts to prevent the failure of a dam if:

(1) Excess flood insurance of a particular class or type is not available from the voluntary market; or

(2) There are so few insurers selling excess flood insurance that a competitive market does not exist.

The commissioner may use appropriated funds as needed to establish and supervise the association.

**NEW SECTION. Sec. 2.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Association" means a nonprofit underwriting association established under this chapter.

(2) "Board" means the governing board of the association.

(3) "Casualty insurance" has the same meaning as "general casualty insurance" in RCW 48.11.070. "Casualty insurance" does not include any type of:

- (a) Workers' compensation insurance;
- (b) Employers' liability insurance;
- (c) Nuclear liability insurance;
- (d) Personal insurance; or
- (e) Surety insurance.

(4) "Dam" means any United States army corps of engineers dam located in a county with a population that exceeds one million.

(5) "Excess flood insurance" means insurance against loss, including business interruption, arising from flood that is in excess of the limit of liability insurance offered by the national flood insurance program.

(6) "Person" means a natural person, association, partnership, or corporation.

(7) "Personal insurance" means:

- (a) Private passenger automobile coverage;
- (b) Homeowner's coverage, including mobile homeowners, manufactured homeowners, condominium owners, and renter's coverage;
- (c) Dwelling property coverage;
- (d) Earthquake coverage for a residence or personal property;
- (e) Personal liability and theft coverage;
- (f) Personal inland marine coverage; and
- (g) Mechanical breakdown coverage for personal auto or home appliances.

(8) "Property insurance" has the same meaning as in RCW 48.11.040 and does not include personal insurance or surety insurance.

**NEW \_\_ SECTION.** **Sec. 3.** (1) The commissioner may create an association to provide excess flood insurance to insure property at risk from, and business that is interrupted by, flood arising from the failure of a dam or from efforts to prevent the failure of a dam if the requirements of this section are met.

(2) The commissioner must hold a hearing under chapters 48.04 and 34.05 RCW before forming an association.

(3) An association may not begin underwriting operations for excess flood or business interruption insurance until the commissioner finds that:

(a) If a market assistance plan formed under section 15 of this act finds that there are fewer than four admitted or surplus lines insurers

1 offering excess flood insurance, exclusive of personal insurance, then  
2 the market assistance plan is inadequate to insure property at risk  
3 from, and business that is interrupted by, flood arising from the  
4 failure of a dam or from efforts to prevent the failure of a dam;

5 (b) Persons cannot buy excess flood insurance through the voluntary  
6 market; or

7 (c) There are so few insurers selling excess flood insurance that  
8 a competitive market does not exist.

9 (4) At a hearing to appeal the commissioner's finding that excess  
10 flood insurance is unavailable through the voluntary market or that a  
11 competitive market does not exist, the finding that four or more  
12 admitted or surplus lines insurers are offering excess flood insurance,  
13 exclusive of personal insurance, is prima facie evidence that a  
14 competitive market does exist. A decision of the commissioner, finding  
15 that excess flood insurance is unavailable through the market  
16 assistance plan, voluntary market, or that a competitive market does  
17 not exist, may be appealed under chapters 48.04 and 34.05 RCW.

18 NEW SECTION. **Sec. 4.** (1) The association may offer policies only  
19 as follows:

20 (a) The coverage of any one policy may not exceed five million  
21 dollars; and

22 (b) The total amount of all coverage offered by the association may  
23 never exceed two hundred fifty million dollars.

24 (2) The board, jointly with the commissioner, shall apportion  
25 policies within these limitations on an equitable basis.

26 NEW SECTION. **Sec. 5.** (1) If an association is formed, a person  
27 that is unable to obtain excess flood or business interruption  
28 insurance because it is unavailable in the voluntary market or because  
29 the market is not competitive is eligible to apply to an association  
30 for insurance.

31 (2) The association may decline to insure particular persons that  
32 present an extraordinary risk because of the nature of their  
33 operations, property condition, past claims experience, or inadequate  
34 risk management. However, the location of a property for which  
35 insurance is sought from the association must not, in and of itself,  
36 constitute an extraordinary risk.

(3) Any decision to decline coverage must be sent to the applicant and include:

(a) A statement of the actual reason for declination; and

(b) A statement that the applicant may appeal the decision to the commissioner.

(4) If the commissioner finds that the decision to decline coverage is not supported by the criteria in this section, the commissioner may require the association to provide coverage.

(5) A decision of the commissioner to provide or to decline to provide coverage under this may be appealed under chapters 48.04 and 34.05 RCW.

NEW SECTION. **Sec. 6.** (1) The association is composed of all insurers that have a certificate of authority to write either casualty or property insurance, or both, in this state. Every property or casualty insurer, or both, must be a member of the association as a condition of its authority to continue to transact business in this state.

(2) The association has the general powers and limitations of a nonprofit corporation under chapter 24.03 RCW and of an insurance company under Title 48 RCW, as needed to transact its business.

(3) To the extent consistent with this chapter, the association and its member insurers are "persons" under chapter 48.30 RCW.

NEW SECTION. **Sec. 7.** (1) A governing board shall administer the association.

(2) The board and the commissioner shall work cooperatively to achieve the objectives of this chapter.

(3) The board may select and employ one or more persons to manage the operations of an association. Every managing person must be authorized to transact insurance in the state of Washington and have demonstrated expertise in excess flood insurance. The board may employ any advisors that the board deems necessary.

(4) The board must consist of seven persons appointed as set forth in this subsection.

(a) Three board members must be member insurers appointed by each of the following three trade associations: Property casualty insurers

1 association of America, American insurance association, and national  
2 association of mutual insurance companies. At least one of the three  
3 insurers on the board must be a domestic insurer.

4 (b) Four board members must be residents of the state. One is  
5 appointed by the insurance commissioner. One is appointed by the King  
6 county council. One is appointed by the association of Washington  
7 cities, to represent one or more of the following municipal  
8 governments: Auburn, Kent, Renton, or Tukwila. One is appointed by  
9 the board of directors of the center for advanced manufacturing Puget  
10 Sound. None of the resident-appointees may be employed by, serve on  
11 the board of directors of, or have a substantial ownership interest in  
12 any insurer.

13 (c) Original board members must be appointed to serve an initial  
14 term of three years and may be appointed for a second term. Board  
15 members may serve consecutive terms. Successor board members must be  
16 appointed as soon as possible subject to (a) and (b) of this  
17 subsection.

18 (5) The commissioner shall notify the members of the board if he or  
19 she has information that any board member is dishonest, reckless, or  
20 incompetent or is failing to perform any duty of his or her office, and  
21 the board shall meet immediately to consider the matter. The  
22 commissioner must receive notice of the time and place of this meeting.  
23 If the board finds by a majority of the board members, with the accused  
24 board member not voting on this matter, that the commissioner's  
25 objection is well-founded, the accused board member shall be removed  
26 immediately. The successor of a board member removed under this  
27 section must be appointed as soon as possible subject to subsection (4)  
28 of this section.

29 (6) All members of the board shall conduct the business of the  
30 association in a manner that is in the interest of all policyholders of  
31 the association. Board members stand in a fiduciary relationship to  
32 the association and must discharge their duties in good faith and with  
33 that diligence, care, and skill that ordinary, prudent persons would  
34 exercise under similar circumstances in a like position.

35 (7) Each person serving on the board or any subcommittee thereof,  
36 each member insurer of the association, and each officer and employee  
37 of the association must be indemnified by the association against all  
38 costs and expenses actually and necessarily incurred by him, her, or it

1 in connection with the defense of any action, suit, or proceeding in  
2 which he, she, or it is made a party by reason of his, her, or its  
3 being or having been a member of the board, or a member or officer or  
4 employee of the association, except in relation to matters as to which  
5 he, she, or it has been judged in such action, suit, or proceeding to  
6 be liable by reason of willful misconduct in the performance of his,  
7 her, or its duties as a member of the board, or member, officer, or  
8 employee of the association. This indemnification is not exclusive of  
9 other rights as to which the member, officer, or employee may be  
10 entitled as a matter of law.

11 (8) Board members shall receive no compensation, but may be  
12 reimbursed for all travel expenses as provided in RCW 43.03.050 and  
13 43.03.060.

14 NEW SECTION. Sec. 8. (1) The board must adopt a plan of operation  
15 within thirty days of its appointment.

16 (2) The plan of operation may take effect only after it has been  
17 reviewed by the commissioner. Any changes recommended by the  
18 commissioner must be either approved by a majority of the members of  
19 the board or a written statement of the board's reasons for rejection  
20 of any provision provided to the commissioner. The commissioner may  
21 continue to consult with the board to arrive at a plan of operation  
22 that is approved by both the commissioner and the board, or the  
23 commissioner may accept the plan of operation of the board. This  
24 process must conclude with a plan of operation accepted by the board  
25 within thirty days of the first board appointed under this act.

26 (a) The plan of operation may be amended by agreement of a majority  
27 of the members of the board and the commissioner.

28 (b) The association must use rates that are demonstrably sound as  
29 compared to accepted actuarial standards. At the time of filing with  
30 the commissioner, the rates must be accompanied by an actuarial  
31 analysis. The rates must comply with chapter 48.19 RCW and be approved  
32 by the commissioner.

33 NEW SECTION. Sec. 9. The association must file a statement  
34 annually with the commissioner that contains information about the  
35 association's transactions, financial condition, and operations during  
36 the preceding year. The statement must be in the form and in a manner

1 approved by the commissioner. The association must maintain its  
2 records according to the accounting practices and procedures manual  
3 adopted by the national association of insurance commissioners. The  
4 commissioner may require the association to furnish additional  
5 information if the commissioner considers it necessary to evaluate the  
6 scope, operation, and experience of the association.

7 NEW SECTION. **Sec. 10.** (1) The commissioner may examine the  
8 transactions, financial condition, and operations of the association  
9 when the commissioner finds it necessary in order to carry out the  
10 purposes of this chapter. Except as set forth in subsections (2) and  
11 (3) of this section, each examination must be conducted in the manner  
12 prescribed for domestic insurance companies in chapter 48.03 or 48.37  
13 RCW.

14 (2) The commissioner is not required to examine any association on  
15 a prescribed cycle or schedule.

16 (3) An association created under this chapter is responsible for  
17 the total costs of its financial and market conduct examinations. RCW  
18 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable  
19 to the examination of an association created under this chapter.

20 NEW SECTION. **Sec. 11.** (1) The association is not a member of the  
21 guaranty fund created under chapter 48.32 RCW. The guaranty fund, this  
22 state, and any political subdivisions are not responsible for losses  
23 sustained by the association.

24 (2) The association is exempt from payment of all fees and all  
25 taxes levied by the state or any of its subdivisions, except taxes  
26 levied on real or personal property.

27 NEW SECTION. **Sec. 12.** (1) The association is funded by premiums  
28 paid by persons insured by the association.

29 (a) All premiums for the association must be deposited into a fund  
30 or funds under management of the board.

31 (b) Premiums must be used to pay claims, administrative costs, and  
32 other expenses of the association.

33 (2) The association may assess its members to pay past and future  
34 financial obligations of the association, not funded by premiums. Each

1 member insurer must be assessed a proportionate share based on the sum  
2 of direct premiums earned in this state for all property insurance and  
3 casualty insurance.

4 (3) If the association makes an assessment, an assessed insurer  
5 must pay the association within thirty days after it receives notice of  
6 the assessment. If an insurer does not pay an assessment within thirty  
7 days after it receives notice of the assessment:

8 (a) The assessment accrues interest at the maximum legal rate until  
9 it is paid in full. The interest is paid to the association;

10 (b) The association may collect the assessment in a civil action  
11 and must be awarded its attorneys' fees if it prevails;

12 (c) The commissioner may suspend, revoke, or refuse to renew an  
13 insurer's certificate of authority; and

14 (d) The commissioner may fine the insurer up to ten thousand  
15 dollars.

16 (4) This section may be enforced under RCW 48.02.080.

17 NEW SECTION. **Sec. 13.** (1) The association may operate for a  
18 period of five years. At the end of the five-year period, the  
19 association must be dissolved unless the legislature authorizes its  
20 continued operation.

21 (2) If, at any time, the commissioner or the board of directors  
22 holds a hearing under chapters 48.04 and 34.05 RCW and determines that  
23 excess flood and business interruption insurance is available through  
24 a market assistance plan, in the voluntary market, or that a  
25 competitive market exists, the commissioner must order the association  
26 to end its underwriting operations.

27 (3) If the commissioner or the board of directors orders the  
28 association to end all underwriting operations, the commissioner must  
29 supervise the dissolution of the association, including settlement of  
30 all financial and legal obligations and distribution of any remaining  
31 assets as follows:

32 (a) If there has been an assessment on the members of the  
33 association, and after all creditors of the association are paid in  
34 full, then to the member insurers in a proportional manner and as  
35 determined by rule by the commissioner; or

36 (b) If there has not been an assessment on the members of the  
37 association, or if there are funds remaining after distribution under



(a) of this subsection and after all creditors of the association are paid in full, then to the policyholders in a proportional manner and as determined by rule by the commissioner.

NEW SECTION. **Sec. 14.** The commissioner may adopt all rules needed to implement and administer this chapter and to ensure the efficient operation of the association, including but not limited to rules:

(1) Creating sample plans of operation for the assistance of the board;

(2) Requiring or limiting certain policy provisions;

(3) Containing the basis and method for assessing members for operation of the association; and

(4) Establishing the order in which the assets of the association that is dissolved by the commissioner must be distributed.

NEW SECTION. **Sec. 15.** (1) The commissioner must by rule require insurers authorized to write property insurance in this state to form a market assistance plan to assist persons located in the geographical area protected by any dam that are unable to purchase excess flood or business interruption insurance in an adequate amount from either the admitted or nonadmitted market.

(2) For the purpose of this section, a market assistance plan means a voluntary mechanism by insurers writing property insurance in this state in either the admitted or nonadmitted market to provide excess flood or business interruption insurance for a class of insurance as designated in writing to the plan by the commissioner.

(3) The bylaws and method of operation of any market assistance plan must be approved by the commissioner prior to its operation.

(4) A market assistance plan must have a minimum of twenty-five insurers willing to insure risks within the class designated by the commissioner. If twenty-five insurers do not voluntarily agree to participate, the commissioner may require either property or property and casualty, or both, insurers to participate in a market assistance plan as a condition of continuing to do business in this state. The commissioner must make this requirement to fulfill the quota of at least twenty-five insurers. The commissioner must make his or her designation on the basis of the insurer's premium volume of property insurance in this state.

1        NEW SECTION.    **Sec. 16.**    The board and the commissioner shall report  
2        to the respective committees of the house of representatives and senate  
3        having jurisdiction over the insurance code by January 31, 2011, and  
4        each subsequent January 31st of each year that the association remains  
5        in existence.

6        **Sec. 17.**    RCW 48.15.040 and 1983 1st ex.s. c 32 s 4 are each  
7        amended to read as follows:

8        If certain insurance coverages cannot be procured from authorized  
9        insurers, such coverages, hereinafter designated as "surplus lines,"  
10       may be procured from unauthorized insurers subject to the following  
11       conditions:

12       (1) The insurance must be procured through a licensed surplus line  
13       broker.

14       (2) The insurance must not be procurable, after diligent effort has  
15       been made to do so from among a majority of the insurers authorized to  
16       transact that kind of insurance in this state.

17       (3) Coverage shall not be procured from an unauthorized insurer for  
18       the purpose of securing a lower premium rate than would be accepted by  
19       any authorized insurer nor to secure any other competitive advantage.

20       (4) The commissioner may by regulation establish the degree of  
21       effort required to comply with subsections (2) and (3) of this section.

22       (5) At the time of the procuring of any such insurance an affidavit  
23       setting forth the facts referred to in subsections (2) and (3) of this  
24       section must be executed by the surplus line broker. Such affidavit  
25       shall be filed with the commissioner within thirty days after the  
26       insurance is procured.

27       (6) For purposes of chapter 48.-- RCW (the new chapter created in  
28       section 18 of this act), a joint underwriting association established  
29       or authorized by the legislature is not an authorized insurer.

30       NEW SECTION.    **Sec. 18.**    Sections 1 through 16 of this act  
31       constitute a new chapter in Title 48 RCW.

32       NEW SECTION.    **Sec. 19.**    This act is necessary for the immediate  
33       preservation of the public peace, health, or safety, or support of the  
34       state government and its existing public institutions, and takes effect  
35       immediately.

1        NEW SECTION.   **Sec. 20.**   This act expires December 31, 2016."

SHB 2560 - H AMD  
By Representative

2        On page 1, line 1 of the title, after "associations;" strike the  
3 remainder of the title and insert "amending RCW 48.15.040; adding a new  
4 chapter to Title 48 RCW; providing an expiration date; and declaring an  
5 emergency."

EFFECT:   References to the Green river area are removed. Policy limits of \$10 million are reduced to \$5 million. An aggregate exposure cap of \$250 million for all in-force policies of the JUA is included. Personal lines are defined and excluded from the definitions of excess flood insurance, property insurance, and casualty insurance. The exclusion from the definition of excess flood insurance means that the JUA cannot offer personal lines coverage. The exclusion from the definitions of property insurance and casualty insurance remove insurers that only offer personal lines coverage from the insurers required to be members of the JUA. Assessments are proportionate based on property insurance and casualty insurance premiums in this state. Composition and selection of the Board is changed. It is clarified that Board members are not paid for their service.

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